

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOSEPHAT HENRY, resident of Harvey,)	
KAY WILLIAMS, resident of Harvey,)	
SYLVIA BROWNE, resident of Clifton Hill,)	CIVIL NO. 1999/0036
MAUDE DREW, resident of Estate Barren Spot,)	
MARTHA ACOSTA, resident of Estate Profit,)	
JOSE BERRIOS, resident of Estate Profit,)	
WILHELMINA GLASGOW, as an individual and as)	
mother and next friend of SAMANTHA VIERA, a Minor,)	
both residents of Estate LaReine,)	
MERCEDES ROSA, resident of Estate Profit,)	
JULIAN ST. BRICE, resident of Clifton Hill,)	
GEORGE RODRIGUEZ, as an individual and as father)	
and next friend of AMANDO and GEORGE E.)	
RODRIGUEZ, Minors, all residents of Estate Profit,)	
SONYA CIRILO, resident of Estate Profit,)	
RAQUEL TAVAREZ, resident of Estate Profit,)	
NEFTALI, as an individual and as father and next friend)	
of ANGEL JAVIER CAMACHO, a Minor, both residents)	
of Estate Profit,)	
CHEDDIE KELSHALL, resident of Estate Profit,)	
and other persons too numerous to mention,)	
A CLASS ACTION,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ST. CROIX ALUMINA, LLC, ALCOA INC., and)	
GLENCORE, LTD., f/k/a CLARENDON, LTD.,)	
)	
Defendants.)	

**ALCOA INC. AND ST. CROIX ALUMINA, LLC'S MOTION FOR SUMMARY
JUDGMENT ON PLAINTIFFS' CLASS CLAIM FOR INJUNCTIVE RELIEF**

Defendants Alcoa Inc. ("Alcoa") and St. Croix Alumina, LLC ("SCA") (collectively, "Defendants") will and hereby do move for an order granting summary judgment on Plaintiffs' class claim for injunctive relief as stated in this Court's June 3, 2008 Order certifying a class

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under Federal Rule of Civil Procedure 23(b)(2). This motion is made pursuant to Federal Rule of Civil Procedure 56 on the grounds that there is no triable issue of fact and that Defendants are entitled to judgment as a matter of law for the following reasons:

1. Alcoa has never owned the alumina refinery property, and SCA has not owned the property since 2002. Because as a matter of law the successor owner has had more than sufficient time to abate the alleged continuing nuisance, Defendants cannot be held liable for the alleged continuing nuisance. Therefore, Plaintiffs are not entitled to injunctive relief requiring Defendants to enter the property to abate the alleged continuing nuisance.

2. Plaintiffs have failed to develop admissible expert evidence regarding (a) the existence of a continuing nuisance and (b) what might constitute an appropriate plan for abatement of that continuing nuisance. Because Plaintiffs cannot meet their burden of proof without expert testimony on both these issues, their claim for injunctive relief fails as a matter of law.

3. The claim for injunctive relief implicates technical and policy considerations particularly within the expertise of the Virgin Islands Department of Planning and Natural Resources ("DPNR"). DPNR is already involved in the preparation, negotiation and implementation of a closure/remediation plan at the site that would conflict with Plaintiffs' requested injunctive relief. Accordingly, the Court should abstain under the primary jurisdiction doctrine and dismiss Plaintiffs' class claim for injunctive relief.

The grounds for summary judgment are set out more fully in the accompanying Memorandum of Law.

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WHEREFORE, Defendants Alcoa Inc. and St. Croix Alumina, LLC respectfully request that the Court enter summary judgment in their favor on 23(b)(2) Class Plaintiffs' claim for injunctive relief and grant Defendants such other relief as the Court deems appropriate.

Dated: May 15, 2009

Respectfully submitted,

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Counsel for Defendants
St. Croix Alumina, LLC and Alcoa Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2009, I electronically filed the foregoing **Motion for Summary Judgment on Plaintiffs' Class Claim for Injunctive Relief** with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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